APPENDIX A

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF KENTUCKY
LOUISVILLE DIVISION

Civil Action No. 5046

The First Hardin National Bank and The Farmers Bank of Vine Grove, Kentucky, - Plaintiffs,

v.

Fort Knox National Bank, - - - Defendant,
James J. Saxon, Comptroller of the Currency of the United States, - - Intervener-Defendant.

FINDINGS OF FACT AND CONCLUSIONS OF LAW.

This cause being heard pursuant to an order for pretrial conference and all parties having been heard by counsel before the Court in chambers at Louisville, Kentucky, on Wednesday, September 1, 1965, at 3:30 P.M., EST, and the Court having considered the arguments of counsel and the briefs filed herein, the pleadings and exhibits and having considered the motions herein made, and the Court, being sufficiently advised, makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

(1) The plaintiff, The First Hardin National Bank, a national banking association, has its principal office in Elizabethtown, Hardin County, Kentucky, and a branch

bank in the incorporated city of Radcliff in Hardin County, Kentucky.

(2) The plaintiff, The Farmers Bank of Vine Grove, a State bank, has its principal office in the incorporated City of Vine Grove in Hardin County, Kentucky, and has no branch bank.

(3) The defendant, Fort Knox National Bank, a national banking association, has its principal office on the Fort Knox Military Reservation on that part of the reservation which, at the time of acquisition by the United States Government, was geographically a part of Hardin County, Kentucky.

(4) James J. Saxon is the duly appointed, qualified and acting Comptroller of the United States and is charged by Law (Title 12, U. S. Code 36(c) with the approval of applications of national banking associations to establish branches. Said James J. Saxon, Comptroller of the Currency, by Order dated August 20, 1965, has been permitted to intervene as a defendant in this action.

(5) The Statute Law of Kentucky, KRS 287.180, permits a state bank, under certain conditions, with the approval of the State Commissioner of Banking, to establish a branch in another incorporated city in the same County in which the principal office of the bank is located, provided there is no principal office of a bank, as distinguished from a branch thereof, in such other incorporated city.

(6) There is no existing principal office of a bank, as distinguished from a branch, in Radcliff, Hardin County, Kentucky.

(7) The defendant, Fort Knox National Bank, made application to the Comptroller of the Currency of the United States, pursuant to Title 12, U. S. Code 36(c), to establish a branch in Radcliff, Hardin County, Kentucky.

(8) After an investigation, the Comptroller of the Currency gave preliminary approval to the application of the

defendant, Fort Knox National Bank, to establish a branch in Radcliff, Hardin County, Kentucky, as evidenced by a letter dated April 16, 1965, attached as defendant's Exhibit A to the answer of the defendant, Fort Knox National Bank.

CONCLUSIONS OF LAW.

(1) This Court has no jurisdiction to review the approval by the Comptroller of the Currency of an application by a national bank for a new branch, except to determine whether or not he has correctly applied the state law standards of location and capitalization made applicable by Title 12, U. S. Code 36(c).

(2) There is no genuine issue as to any material fact between the parties.

(3) The cession in 1904 (KRS 3.030) by the Commonwealth of Kentucky of rights and jurisdiction to the United States over the area now known as the Fort Knox Military Reservation did not cause that portion of the Reservation upon which the principal office of the Fort Knox National Bank is located to cease to be a part of Hardin County and the State of Kentucky. The geographic structure of Hardin County and of Kentucky remained the same as it was before the cession of jurisdiction over the area.

(4) A national banking association, with the approval of the Comptroller of the Currency of the United States, may establish and operate branches at any point within the state in which said association is situated, at which such establishment and operation are authorized to state banks by the Statute Law of the state in question. (Title 12, U. S. Code, Section 36(c)(2).

(5) The Statute Law of Kentucky authorizes to state banks the establishment and operation of branches in any city in the same county in which the bank is situated if there is no "existing bank" in that city. The term "existing

bank" means the principal office of the bank as distinguished from a branch thereof. KRS 287-180(2)(b).

(6) A state bank, whose principal office is situated on that part of the Fort Knox Military Reservation which is a part of Hardin County, could, with the approval of the Kentucky Commissioner of Banking, establish a branch in the incorporated city of Radcliff, Hardin County, Kentucky.

(7) The law of the case is with the defendant, Fort Knox National Bank, and the intervener-defendant, James J. Saxon, Comptroller of the Currency of the United States.

(8) The complaint fails to state a claim upon which relief can be granted against the defendants.

Date: 9-14-65.

(s) Henry L. Brooks
Judge.

Have seen:

Robert E. Hatton
L. A. Faurest
Attorney for First Hardin National Bank
L. Lyne Smith, Jr.

A Copy: Attest
Martin R. Glenn, Clerk
By Helen Harbison
Deputy Clerk

APPENDIX B

UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

No. 16906

THE FIRST HARDIN NATIONAL BANK and THE FARMERS BANK OF VINE GROVE, KENTUCKY, - - - - - - *Plaintiffs-Appellants,*

v.

FORT KNOX NATIONAL BANK, - *Defendant-Appellee,*
and
JAMES J. SAXON, Comptroller of the Currency of the United States, - *Intervening Defendant-Appellee.*

Appeal from the United States District Court for the Western District of Kentucky.

Decided May 26, 1966.

Before: WEICK, Chief Judge, O'SULLIVAN and CELEBREZZE, Circuit Judges.

CELEBREZZE, Circuit Judge. The First Hardin National Bank, a National Banking Corporation, and The Farmers Bank of Vine Grove, a State Banking Corporation, hereinafter referred to as Appellants, instituted this action to enjoin the Fort Knox National Bank, hereinafter referred to as Appellee, from opening a branch bank at Radcliff, Har-

din County, Kentucky. James J. Saxon, Comptroller of the Currency of the United States, intervened on behalf of the Appellee.

Appellee is a National Banking Corporation, with its principal office located upon the Fort Knox Military Reservation. Fort Knox was established and is now operated and controlled by the United States. The State of Kentucky consented to the acquisition by the United States of the Fort Knox Military Reservation, and did not retain any right of any kind in or upon the land acquired by the United States for so long as the same shall remain the property of the United States.[1]

Pursuant to 12 U.S.C., Section 36(c),[2] Appellee sought to establish a branch bank at Radcliff, Hardin County, Kentucky. The Comptroller of the Currency investigated Appellee's application and on April 15, 1965, gave preliminary approval. At the time this suit was instituted, Appellee had not asked for a certificate of authority to open the branch, and one has not yet been granted.

A National bank, with the approval of the Comptroller of the Currency of the United States, may establish and

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[1]KRS 3.030 provides: "Jurisdiction over Military Post (Fort Knox) at West Point Ceded. Kentucky cedes to the United States all the rights and jurisdiction which she now possesses over the land and premises in the vicinity of West Point, Kentucky, conveyed or to be conveyed to the United States for the purposes of establishing a permanent camp of instruction and military post so long as the same shall remain the property of the United States."

[2]12 U.S.C.A., Section 36(c) provides as far as applicable here: "A national banking association may, with the approval of the Comptroller of the Currency, establish and operate new branches: (1) Within the limits of the city, town or village in which said association is situated, if such establishment and operation are at the time expressly authorized to State Banks by the law of the State in question; and (2) at any point within the State in which said association is situated, if such establishment and operation are at the time authorized to State banks by the statute law of the State in question by language specifically granting such authority affirmatively and not merely by implication of recognition, and subject to the restrictions as to location imposed by the law of the State on State banks."

operate a branch at any point within the State where the State authorizes the establishment and operation of a State bank.[3] The statute law of Kentucky, KRS 287.180(2) provides:

> "Any corporation presently or hereafter engaged in the business of banking, and meeting the requirements of this subsection, may apply to the Commissioner of Banking for permission to establish, within the city in which its principal office is located and, subject to the limitation hereinafter imposed, within the county in which its principal office is located or in an adjacent county, in which there is no existing bank a branch at which all of the powers conferred in subsection (1) of this section may be exercised * * *
>
> "(b) No such corporation shall be permitted to establish a branch in any incorporated city, other than in the city in which its principal office is located or in any adjacent county, in which there is an existing bank. Nor shall any such corporation be permitted to establish a branch in any unincorporated area within a radius of one mile of an existing bank located in such unincorporated area. As used in this subsection, an 'existing bank' shall mean the principal office of a bank as distinguished from a branch thereof."

Here the Appellee, located upon the Fort Knox Military Reservation, is attempting to establish a branch bank, outside the Reservation, at Radcliff, Hardin County, Kentucky. It is conceded there is no principal office of any bank in Radcliff, and that Appellee has its main office on a part of Fort Knox which was a part of Hardin County at the time of its acquisition by the United States.

The sole issue presented is whether that part of Fort Knox, which was part of Hardin County at the time it was

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[3] 12 U.S.C., Section 36(c)(2).

acquired by the United States with the consent of Kentucky, is a part of Hardin County as the word "county" is used in the Banking Act of Kentucky. Appellee and the Comptroller of the Currency urge that it is, and the District Court so found.

This Court held in *Community National Bank of Pontiac* v. *Saxon,* 310 F. 2d 224 (C.A. 6, 1962) that the Comptroller has "the initial responsibility of determining whether the several conditions under which a National banking association may establish a branch are met." The scope of judicial review is limited, and the factual findings of the Comptroller will not be overturned unless they are arbitrary, capricious, or otherwise not in accordance with law. In that case the Court held that the finding of the Comptroller that the area in which the defendant bank sought to establish a branch was a village as required by the Michigan statute was essentially a finding of fact and his decision was conclusive since it was reasonably supported by substantial evidence.

The principle has been well established that a military reservation within a state remains a geographical part of the city, county and state of which it was part at the time of acquisition by the United States. In *Howard* v. *Commissioners of the Sinking Fund of the City of Louisville,* 344 U. S. 624 (1953), the City of Louisville, Kentucky annexed certain federally owned land on which a naval ordnance plant was located. The Appellants in that case argued that the City could not annex this federal area because it had ceased to be a part of Kentucky when the United States assumed exclusive jurisdiction over it. In holding that the geographical structure of Kentucky remained the same, the Supreme Court stated:

> "When the United States, with the consent of Kentucky, acquired the property upon which the Ordnance Plant is located, the property did not cease to

> be a part of Kentucky. The geographical structure of Kentucky remained the same. In rearranging the structural divisions of the Commonwealth, in accordance with the state law, the area became a part of the City of Louisville, just as it remained a part of the County of Jefferson and the Commonwealth of Kentucky."

In the instant case, upon conveyance to the United States, the State of Kentucky relinquished its jurisdiction over the area conveyed. Under the terms of the conveyance, the loss of jurisdiction was not absolute. The interest of Kentucky in the land conveyed became dormant, and will remain dormant so long as the land conveyed remains the property of the United States. When the United States ceases to own the land conveyed, jurisdiction will be reactivated in the State of Kentucky. The geographical structure of the State of Kentucky not only remains the same, but the State retains a dormant jurisdiction over the land.[4]

Appellees contend that "county" involves geography, and argue that geographically the part of Fort Knox which had been a part of Hardin County at the time of conveyance is still a part of Hardin County.

Appellants contend that when the Kentucky legislature used the word "county" in KRS 287.180(2) it used it to designate a political entity, and did not use the word "county" as a geographic term.

A political subdivision must of necessity have geographic boundaries—the political aspect dealing with the

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[4]Under Section 63 of the Kentucky Constitution, the Kentucky General Assembly did not exercise its authority to abolish Hardin County. Section 65 of the Kentucky Constitution provides that there shall be no territory stricken from any county unless a majority of the voters living in such territory shall petition for subdivision. We are unable to determine from the record whether either one of these two provisions was complied with.

right to govern, the geographic boundaries dealing with the physical layout of the land area, and consequently a limitation its political control over the area so long as the property is owned by the United States Government, but did not relinquish its geographical boundaries.

Therefore, for the purposes of the Banking Act it became a question of fact for the Comptroller to determine, and the finding of the Comptroller that the part of Fort Knox upon which Appellee is located is part of Hardin County as required by Kentucky statute, is a factual finding reasonably supported by substantial evidence.

Judgment of the District Court is affirmed.

APPENDIX C

12 U.S.C., SECTION 36

§ 36. Branch banks

The conditions upon which a national banking association may retain or establish and operate a branch or branches are the following:

(a) A national banking association may retain and operate such branch or branches as it may have had in lawful operation on February 25, 1927, and any national banking association which continuously maintained and operated not more than one branch for a period of more than twenty-five years immediately preceding February 25, 1927, may continue to maintain and operate such branch.

(b) (1) A national bank resulting from the conversion of a State bank may retain and operate as a branch any office which was a branch of the State bank immediately prior to conversion if such office—

(A) might be established under subsection (c) of this section as a new branch of the resulting national

bank, and is approved by the Comptroller of the Currency for continued operation as a branch of the resulting national bank;

(B) was a branch of any bank on February 25, 1927; or

(C) is approved by the Comptroller of the Currency for continued operation as a branch of the resulting national bank.

The Comptroller of the Currency may not grant approval under clause (C) of this paragraph if a State bank (in a situation identical to that of the national bank) resulting from the conversion of a national bank would be prohibited by the law of such State from retaining and operating as a branch an identically situated office which was a branch of the national bank immediately prior to conversion.

(2) A national bank (referred to in this paragraph as the "resulting bank"), resulting from the consolidation of a national bank (referred to in this paragraph as the "national bank") under whose charter the consolidation is effected with another bank or banks, may retain and operate as a branch any office which, immediately prior to such consolidation, was in operation as—

(A) a main office or branch office of any bank (other than the national bank) participating in the consolidation if, under subsection (c) of this section, it might be established as a new branch of the resulting bank, and if the Comptroller of the Currency approves of its continued operation after the consolidation;

(B) a branch of any bank participating in the consolidation, and which, on February 25, 1927, was in operation as a branch of any bank; or

(C) a branch of the national bank and which, on February 25, 1927, was not in operation as a branch

of any bank, if the Comptroller of the Currency approves of its continued operation after the consolidation.

The Comptroller of the Currency may not grant approval under clause (C) of this paragraph if a State bank (in a situation identical to that of the resulting national bank) resulting from the consolidation into a State bank of another bank or banks would be prohibited by the law of such State from retaining and operating as a branch an identically situated office which was a branch of the State bank immediately prior to consolidation.

(3) As used in this subsection, the term "consolidation" includes a merger.

(c) A national banking association may, with the approval of the Comptroller of the Currency, establish and operate new branches: (1) Within the limits of the city, town or village in which said association is situated, if such establishment and operation are at the time expressly authorized to State banks by the law of the State in question; and (2) at any point within the State in which said association is situated, if such establishment and operation are at the time authorized to State banks by the statute law of the State in question by language specifically granting such authority affirmatively and not merely by implication or recognition, and subject to the restrictions as to location imposed by the law of the State on State banks. In any State in which State banks are permitted by statute law to maintain branches within county or greater limits, if no bank is located and doing business in the place where the proposed agency is to be located, any national banking association situated in such State may, with the approval of the Comptroller of the Currency, establish and operate, without regard to the capital requirements of this section, a seasonal agency in any resort community within the limits of the county in which the main office of such asso-

ciation is located, for the purpose of receiving and paying out deposits, issuing and cashing checks and drafts, and doing business incident thereto: *Provided,* That any permit issued under this sentence shall be revoked upon the opening of a State or national bank in such community. Except as provided in the immediately preceding sentence, no such association shall establish a branch outside of the city, town, or village in which it is situated unless it has a combined capital stock and surplus equal to the combined amount of capital stock and surplus, if any, required by the law of the State in which such association is situated for the establishment of such branches by State banks, or, if the law of such State requires only a minimum capital stock for the establishment of such branches by State banks, unless such association has not less than an equal amount of capital stock. As amended July 15, 1952, 1952, c. 753, § 2(b), 66 Stat. 633; Sept. 28, 1962, Pub. L. 87-721, 76 Stat. 667.

APPENDIX D

KENTUCKY REVISED STATUTES

287.180 [579] **Powers of banks; branch and agency banks.** (1) Banks authorized under the laws of this state may, except as provided in subsection (2) of this section, exercise, only at their principal office, powers necessary to carry on the business of banking by discounting and negotiating notes, drafts, bills of exchange and other evidences of debt, and by purchasing bonds, receiving deposits and allowing interest thereon, buying and selling exchange, coin and bullion and lending money on personal or real security.

(2) Any corporation presently or hereafter engaged in the business of banking, and meeting the requirements of this subsection, may apply to the Commissioner of Bank-

ing for permission to establish, within the city in which its principal office is located and, subject to the limitation hereinafter imposed, within the county in which its principal office is located or in an adjacent county, in which there is no existing bank a branch at which all of the powers conferred in subsection (1) of this section may be exercised. Before the Commissioner of Banking shall approve or disapprove any application made under this subsection he shall ascertain and determine that the public convenience and advantage will be served and prompted thereby and that there is reasonable probability of the successful operation of such branch. No such branch shall be authorized or approved by the commissioner unless all of the following are complied with:

(a) No such corporation having a combined capital and surplus of less than $100,000 shall be permitted to establish any branch. Any corporation applying for permission to establish a branch shall, be required to have a minimum combined capital and surplus for each branch applied for in accordance with the following table:

If the principal office is located in:

1. An unincorporated area or in a city of 7,999 population or less.....$100,000
2. City with population of 8,000 to 19,999.....$200,000
3. City with population of 19,999 and over one branch may be authorized for every $250,000 of capital surplus.

Said population is to be determined by the last census or any future census of the United States.

(b) No such corporation shall be permitted to establish a branch in any incorporated city, other than in the city in which its principal office is located or in any adjacent county, in which there is an existing bank. Nor shall any

such corporation be permitted to establish a branch in any unincorporated area within a radius of one mile of an existing bank located in such unincorporated area. As used in this subsection, an "existing bank" shall mean the principal office of a bank as distinguished from a branch thereof.

(c) The permission to open a branch shall lapse at the end of six months unless it shall have been opened and business actually begun in good faith. For reasons determined by the Commissioner of Banking to be sufficient said permission to open a branch may, with the approval of the commissioner, be extended for one six month's period.

(3) Any corporation which on January 1, 1954, was engaged in operating an agency or branch bank, may continue to retain and operate the same under the general banking laws, and the requirements set forth in this section in respect to capital shall not apply to any such existing agency or branch bank but only as to those agencies or branch banks which may be established in the future pursuant to the terms of this section.

(4) The provisions of this section shall not be construed to prohibit the merger of banks in the same county and the operation by the merged corporation of such banks, nor to prohibit the sale of any bank to, and the purchase thereof by, any other bank in the same county and the operation of such bank by the purchasing bank as a branch, provided the Commissioner of Banking shall determine that the public convenience and necessity will be served by such operation, and provided further that, at the time of such merger or purchase, each of the banks involved shall have been in operation for a period of five years or more.

(5) Any national banking association or any state bank member of the Federal Reserve System whose principal office is located in this state is hereby authorized to do all things and perform all acts which state banks are permitted to do or perform under this section, subject to the con-

ditions and restrictions provided for banks as to exercise of such powers.

(6) When a branch or agency bank has once been established any operation thereof shall not be discontinued, and said branch or agency bank shall not be closed until after ninety days notice in writing to the commissioner. In the discretion of the commissioner said branch or agency bank proposing to discontinue operation may be required to give notice of the date when such operation will cease. (1954, c. 182, § 1; 1962, c. 252)

APPENDIX E

IN THE

UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF KENTUCKY
AT LOUISVILLE

Civil Action File No. 5046

The First Hardin National Bank and
The Farmers Bank of Vine Grove, Kentucky, - Plaintiffs,

v.

Fort Knox National Bank, - - - Defendant.

COMPLAINT.

(1) This action arises under Title 12, Paragraph 35, United States Code as hereinafter more fully appears. The matter in controversy exceeds, exclusive of interest and costs, the sum of Ten Thousand ($10,000.00) Dollars.

(2) The plaintiff, The First Hardin National Bank, is a national banking corporation duly created and existing under and by the banking laws of the United States. The principal office and place of business of the said Bank is in Elizabethtown, Hardin County, Kentucky. It owns and operates a branch in Radcliff, an incorporated city located in Hardin County, Kentucky. It has owned and operated the said branch for more than two (2) years.

(3) The Farmers Bank of Vine Grove is a banking corporation duly created and existing under and by the laws of the State of Kentucky. It owns and operates a bank in Vine Grove, an incorporated city of Hardin County, Kentucky, and has owned and operated said bank in said city for more than twenty (20) years.

(4) The defendant, Fort Knox National Bank, is a banking corporation duly created and existing under and by the laws of the United States. Its principal office and place of business is located upon the Fort Knox Military Reservation.

(5) The defendant has announced it will open a branch bank in Radcliff, Hardin County, Kentucky, and unless enjoined and restrained by this Court will open a branch bank in said City.

(6) Title 12, Paragraph 36, United States Code Annotated provides in substance banks organized under the laws of the United States may open branches when and where a state bank would be authorized to open a branch.

(7) Kentucky Revised Statutes 287.180 provides: Powers of banks; branch and agency banks. (1) Banks authorized under the laws of this state may, except as provided in subsection (2) of this section, exercise, only at their principal office, powers necessary to carry on the business of banking by discounting and negotiating notes, drafts, bills of exchange and other evidences of debt, and by purchasing bonds, receiving deposits and allowing interest

thereon, buying and selling exchange, coin and bullion and lending money on personal or real security.

(2) Any corporation presently or hereafter engaged in the business of banking, and meeting the requirements of this subsection, may apply to the Commissioner of Banking for permission to establish, within the city in which its principal office is located and, subject to the limitation hereinafter imposed, within the county in which its principal office is located or in an adjacent county in which there is no existing bank a branch at which all of the powers conferred in subsection (1) of this section may be exercised. Before the Commissioner of Banking shall approve or disapprove any application made under this subsection he shall ascertain and determine that the public convenience and advantage will be served and prompted thereby and that there is reasonable probability of the successful operation of such branch. No such branch shall be authorized or approved by the commissioner unless all of the following are complied with: (a) No such corporation having a combined capital and surplus of less than $100,000 shall be permitted to establish any branch. Any corporation applying for permission to establish a branch shall, be required to have a minimum combined capital and surplus for each branch applied for in accordance with the following table:

If the principal office is located in:

1. An unincorporated area or in a city of 7,999 population or less.....$100,000
2. City with population of 8,000 to 19,999.....200,000
3. City with population of 19,999 and over one branch may be authorized for every $250,000 of capital and surplus.

Said population is to be determined by the last census or any future census of the United States.

(b) No such corporation shall be permitted to establish a branch in any incorporated city, other than in the city in which its principal office is located or in any adjacent county, in which there is an existing bank, nor shall any such corporation be permitted to establish a branch in any unincorporated area within a radius of one mile of an existing bank located in such unincorporated area. As used in this subsection, an "existing bank" shall mean the principal office of a bank as distinguished from a branch thereof.

(8) The defendant claims under and by the provisions of the said Statutes it is authorized and permitted to open and operate a branch bank in Hardin County, Kentucky, and in the City of Radcliff, Hardin County, Kentucky. The plaintiffs claim under and by said Statutes the defendant cannot open or operate a bank in Hardin County, Kentucky, or in the City of Radcliff, Hardin County, Kentucky, and the opening or operating of any bank or branch of the Fort Knox National Bank in Hardin County, Kentucky, would be unlawful.

(9) The defendant does not have an office, place of business or process agent in the State of Kentucky and does not pay taxes in the State of Kentucky.

(10) The operation by the defendant of a branch in the City of Radcliff would cause plaintiffs to lose customers and would impair the ability of each plaintiff to operate a bank and would cause great and irreparable injury to each plaintiff.

Wherefore, the plaintiffs demand the Court declare the rights of the parties; that the Court declare the defendant does not have a right to open or operate a branch bank in Hardin County, Kentucky, or in the City of Radcliff, Hardin County, Kentucky, and that an order enjoining and

prohibiting the defendant from opening or operating any such bank be entered herein.

L. A. Faurest, Attorney for
First Hardin National Bank
H. L. James, Attorney for
Farmers Bank of Vine Grove, Kentucky

APPENDIX F

ANSWER OF THE FORT KNOX NATIONAL BANK.

For its Answer, Defendant, Fort Knox National Bank, states as follows:

FIRST DEFENSE.

The Complaint fails to state a claim against Defendant upon which relief can be granted and the Complaint should be dismissed.

SECOND DEFENSE.

Defendant denies the allegation contained in the first sentence of Paragraph (1) of the Complaint which refers to Title 12 Paragraph 35 United States Code; and states that the defendant does not have sufficient knowledge or information to form a belief as to the truth of the allegation contained in the last sentence of Paragraph (1) of the Complaint, and therefore denies same.

THIRD DEFENSE.

Defendant admits the allegations contained in Paragraphs (2), (3) and (5) of the Complaint.

FOURTH DEFENSE.

In answer to Paragraph (4) of the Complaint, the Defendant admits the first sentence, but further states that the principal office of the Fort Knox National Bank is

within the geographical boundaries of Hardin County, Kentucky, on the Fort Knox Military Reservation.

FIFTH DEFENSE.

Defendant denies Paragraph (6) of the Complaint and states that the right of National banks to establish branch banks is governed by Title 12 U. S. Code Section 36, which section incorporates by reference the State law applicable to State banks only to the extent spelled out in 12 USC 36(c).

SIXTH DEFENSE.

Defendant admits that Paragraph (7) of the Complaint is a correct quotation of a portion of KRS 287.180 which section relates to "powers of banks; branch and agency banks." Said Paragraph (7) of the Complaint, however, quotes only paragraphs (1), (2)(a) and (2)(b) of said section of the Kentucky Statute. It omits to quote paragraphs (2)(c), (3), (4), (5) and (6) of said section. Paragraph (5) of KRS 287.180 which contains the only reference to national banks reads as follows:

> "Any national banking association or any state bank member of the Federal Reserve System whose principal office is located in this state is hereby authorized to do all things and perform all acts which state banks are permitted to do or perform under this section, subject to the conditions and restrictions provided for banks as to exercise of such powers."

Defendant denies that the right of national banks to establish a branch bank is governed by KRS 287.180 or any other section of the Kentucky Statute. Such power is derived only from the provisions of 12 U. S. Code Section 36.

SEVENTH DEFENSE.

Defendant denies the allegation contained in Paragraph (8) of the Complaint that it is authorized under and by the provisions of the Kentucky Statute to own and operate a

branch bank in Radcliff, Hardin County, Kentucky. Defendant's permission and authority to open and operate a branch in Radcliff, Hardin County, Kentucky, is granted under 12 U. S. Code Section 36 and such opening and operation of a branch is entirely lawful under the laws of the United States which laws apply to Defendant.

EIGHTH DEFENSE.

Defendant denies allegations contained in Paragraph (9) of the Complaint and states affirmatively that it has its principal office within the geographic boundaries of Hardin County, Kentucky, on the Fort Knox Military Reservation. Defendant states that the laws of the United States applying to national banking associations do not require the appointment of a process agent.

NINTH DEFENSE.

Defendant states it does not have sufficient knowledge or information to form a belief as to the truth of the allegation contained in Paragraph (10) of the Complaint and therefore denies same.

TENTH DEFENSE.

The Defendant states that James J. Saxon, Comptroller of the Currency, Treasury Department of the United States, who approved the Defendant's application to establish a branch office in Radcliff, Hardin County, Kentucky, by letter dated April 16, 1965, a copy of which is attached hereto as Defendant's Exhibit "A," is a proper party and in order to effectively dispose of all the issues raised herein and to enable the Court to grant complete relief, said James J. Saxon, Comptroller of the Currency, should be made a party hereto.

Wherefore, having fully answered the Complaint, Defendant, Fort Knox National Bank, demands as follows:

(1) That this action be dismissed because the Complaint fails to state a claim against the Defendant upon which relief can be granted.

(2) That James J. Saxon, Comptroller of the Currency, Treasury Department of the United States, be made a party hereto under Rule 13(h) because his presence is required for the granting of complete relief in this action.

(3) That the Court award to the Defendant its costs and attorneys fees.

L. Lyne Smith, Jr.,
310 W. Liberty Street, Suite 207,
Louisville, Kentucky 40202,
Telephone: 584-8027,
Attorney for Defendant, Fort Knox National Bank.,

(s) Robert E. Hatton,
310 W. Liberty Street, Suite 106
Louisville, Kentucky 40202,
Telephone: 587-6933,
Attorney for Defendant, Fort Knox National Bank.

I hereby certify that a copy of this Answer has been this date, June, ____, 1965, mailed to L. A. Faurest, Jr., 128 W. Dixie Highway, Elizabethtown, Kentucky, Attorney for First Hardin National Bank, Radcliff, Kentucky, and to H. L. James, 31 Public Square, Elizabethtown, Kentucky, Attorney for Farmers Bank of Vine Grove, Kentucky.

L. Lyne Smith, Jr.,
Attorney for Defendant.

(s) Robert E. Hatton,
Attorney for Defendant.

APPENDIX G

ANSWER OF INTERVENER-DEFENDANT.

Intervener-Defendant, James J. Saxon, Comptroller of the Currency of the United States, by his undersigned attorneys, in answer to the plaintiffs' complaint filed herein, admits, denies and alleges as follows:

1. Intervener-Defendant (hereinafter called "the Comptroller") denies the allegations contained in paragraph 1 of the complaint.

2. The Comptroller admits the allegations contained in paragraph 2 of the complaint.

3. For lack of knowledge or information sufficient to form a belief, the Comptroller denies the allegations contained in paragraph 3 of the complaint.

4. The Comptroller admits the allegations contained in paragraph 4 of the complaint.

5. The Comptroller admits the allegations contained in paragraph 5 of the complaint.

6. The Comptroller admits that 12 U.S.C. 36 sets forth conditions on which national banks may establish branches and refers the Court to that section for the language thereof.

7. The Comptroller admits that the quotation from Kentucky Revised Statutes 287.180 is accurate and refers the Court to that section for the complete language thereof.

8. The Comptroller admits the allegations contained in paragraph 8 of the complaint.

9. The Comptroller denies the allegations contained in paragraph 9 of the complaint except that he denies that the defendant's operations are governed by any state statutes.

10. The Comptroller denies the allegations contained in paragraph 10 of the complaint.

Defendant denies each and every allegation of the complaint not herein admitted, qualified or denied.

FIRST AFFIRMATIVE DEFENSE.

The complaint fails to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE.

The Court lacks jurisdiction over the subject matter of this action.

THIRD AFFIRMATIVE DEFENSE.

Plaintiffs lack standing to maintain this action.

Wherefore, having fully answered the Comptroller of the Currency of the United States, intervener-defendant, prays:

1. That the relief requested by the plaintiffs be denied and the complaint be dismissed;

2. That the Court adjudge, decree and declare that the approval by the Comptroller of the Currency of the application of the Fort Knox National Bank to establish a branch at Central Parkway and Woodland Drive in the City of Radcliff, Hardin County, Kentucky, is in accordance with law; and

3. That the intervener-defendant be given all such other and further relief as the Court may deem just and proper.

Respectfully submitted,

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Assistant Attorney General,

Ernest W. Rivers,
United States Attorney

Harlan F. Leathers,
Richard S. Beatty,
Attorneys, Department of Justice.
Attorneys for Defendant Saxon.

CERTIFICATION.

I hereby certify that on this day, September 21, 1966, I have served the foregoing Petition for Writ of Certiorari upon the parties by mailing a copy of same to:

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SUPREME COURT OF THE UNITED STATES

October Term 1966

No. 588

THE FIRST HARDIN NATIONAL BANK and THE FARMERS BANK OF VINE GROVE, KENTUCKY, - - - - - - Petitioners,

versus

FORT KNOX NATIONAL BANK and JAMES J. SAXON, Comptroller of the Currency of the United States, - - - - - Respondents.

FORT KNOX NATIONAL BANK'S RESPONSE TO PETITION.

"(6) A state bank, whose principal office is situated on that part of the Fort Knox Military Reservation which is a part of Hardin County, could, with the approval of the Kentucky Commissioner of Banking, establish a branch in the incorporated city of Radcliff, Hardin County, Kentucky." (U. S. District Court's Conclusion No. 6.)

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SUPREME COURT OF THE UNITED STATES

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No. _____

THE FIRST HARDIN NATIONAL BANK and THE FARMERS BANK OF VINE GROVE, KENTUCKY, - - - - - - - - *Petitioners,*

v.

FORT KNOX NATIONAL BANK and JAMES J. SAXON, Comptroller of the Currency of the United States, - *Respondents.*

FORT KNOX NATIONAL BANK'S RESPONSE TO PETITION.

QUESTIONS PRESENTED.

The respondent is dissatisfied with the petitioners' statement of the Questions Presented and therefore makes this counter-statement of the Questions Presented.

(1) Have the Petitioners stated a case upon which this Court under its rules may grant certiorari?

(2) Does land located in Hardin County at the time of acquisition by the United States and cession of jurisdiction by Kentucky remain a part of Hardin County after such acquisition and cession?

(3) Have the Courts below and the Comptroller correctly construed and applied the law applicable to establishment of bank branches in Kentucky?